Customary & Puja Bonus Under The Payment Of Bonus Act, 1965

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Incentivising employees and giving them a share of the profits of the establishment has been a longstanding practice in India, established and continued since the First World War. Over the years, such gestures of goodwill and discretionary payments have been formalised in respect of certain category of employees vide the Payment of Bonus Act, 1965 (Bonus Act), which is applicable to every factory and every other establishment in India, where 20 or more persons have been employed in an accounting year. However, only those employees who are earning a salary not exceeding INR 21,000 per month and having worked for at least 30 working days in an accounting year are entitled to statutory bonus prescribed under the Bonus Act.

The Bonus Act requires every employer to mandatorily pay to every eligible employee a minimum annual bonus, and it also prescribes the maximum bonus that may be paid to employees. However, as per Section 17 of the Bonus Act, the employer shall be entitled to deduct any customary/ puja bonus or interim bonus paid to an employee in an accounting year from the amount of bonus payable to such employee in the relevant accounting year.

Customary/Puja Bonus Under The Bonus Act

The sense of social justice has led to the recognition in law of the right of the workmen to get other kinds of bonus not necessarily connected with the earnings/profits of an establishment. One such kind of bonus is that which is paid on the occasion of festivals celebrated in the respective parts of the country, such as puja bonus in Bengal and Diwali bonus in Western India.

While the expressions 'customary bonus' or 'puja bonus' have not been defined in the Bonus Act, 'customary bonus' refers to bonus which is being paid by an employer by way of a tradition or custom at a uniform rate, and 'puja bonus' refers to a bonus which is typically paid on the occasion of a festival or religious celebration. Such bonuses are paid over several years and are unconnected with the profits of the organisation, and employees may demand such bonuses as a statutory right and as an implied term of employment. However, the definition and entitlement to such bonuses have been the subject matter of judicial interpretation over the years.

The determination of whether a payment is to be construed as customary / puja bonus would be subject to certain terms that have been laid down by various courts in India as follows:

- Whether such payment of bonus has been made over an unbroken series of years;
- Whether the payment has been made for a sufficiently long period (though the length of the period might depend upon the circumstances of each case);
- Whether the payment does not depend upon the earning of profits and has been paid even in years of loss; and
- Whether the payment has been made at a uniform rate throughout to justify an inference that the payment at such rate had become customary and traditional in the particular concern.

Therefore, the judicial chorus of legally claimable customary bonus brings to the fore that all of the above tests are required to be answered in the affirmative for a payment to be termed as 'customary bonus'. The fact that a particular continuous payment was labelled as 'ex-gratia' by the employer would not have an adverse effect on such payment qualifying as 'customary bonus'. In other words, identification of a payment as 'customary bonus' would not be materially affected by unilateral declarations of one party when the said declarations are inconsistent with the course of conduct adopted by it.

Indian courts have further observed that it is not the festival which would establish customary/ puja bonus as an implied term of employment, but the unbroken flow of annual payments as a custom or practice. Omission to associate a bonus payment with a festival does not detract from the claim of customary bonus. Therefore, continuous payment of bonuses/ex-gratia amounts on account of the Republic Day, the Independence Day or the establishment's Founder's Day would also amount to a customary bonus under the Bonus Act, and employees are well within their rights to claim such bonus upon non-payment by the employer.

Judicial precedents in the context of the Bonus Act have conclusively held that bonus is not inflexible and solely pegged to the profit made by an establishment in a particular accounting year. While profit-based bonus is the most common form of bonus, there may be customary or traditional bonus which emerge from long and continued usage leading to a reasonable expectation materialising in a right.

Other commonly provided bonuses are attendance bonus and performance bonus. However, such bonuses are not uniform across all employees and may vary from one accounting year to another. Payment of such bonuses are contractually governed and may not be claimed as a matter of right under the Bonus Act.

In order to avoid such ambiguities, and to claim the benefit of Section 17 of the Bonus Act and deduct the customary/puja bonus from the annual bonus payable to the employees, it is always advisable for the employer to clarify that any incentives paid shall form part of the customary bonus and are to be deducted from the bonus payable under the Bonus Act.

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Q&A

Q In order to avoid claims of permanency of employment with the principal employer, is it required to provide a break in service for contract labour after engaging them for a period of 240 days?

A As per the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), there is no time period prescribed for engagement of contract labour beyond which they may be considered as permanent / regular employees of the principal employer. Therefore, there is no requirement to provide a break in services of the contract labour as the length of service is not a condition for regularisation of the services of the contract labour.

Q Can contract labour be engaged perennially or for carrying out core activities of the establishment?

A CLRA prohibits engagement of contract labour in certain core activities of an establishment if the same has been specifically prohibited through a notification of the Central or the state government. For instance, the Andhra Pradesh government has amended the CLRA to state that a core activity is one for which an establishment is set up and includes any activity which is essential or necessary to the core activity, but activities related to canteen and catering services, sanitation works, loading and unloading operations, etc. do not come under the ambit of core activities unless these activities themselves are the core activities of such establishment.

Therefore, contract labour may be engaged perennially or for carrying out core activities of the establishment so long as there is no prohibition through a notification by the appropriate government under the CLRA. That said, it is advisable that the service contracts between the principal employer and the contractor are renewed on a periodic basis and with a break of few days in between so as to counter any permanency claims of contract workers.

Q Who will be deemed liable for timely payment of wages to the contract labour?

A Wages to the contract labour employed by the contractor shall be disbursed to them by the contractor himself or his nominee, and the principal employer has to only depute its representative to be present and to sign the payment register in token of having disbursed the salary in his presence by the contractor. If wages are paid online or through other electronic means, the principal employer may require the contractor to submit bank statements and appropriate undertakings to prove the same. However, the principal employer shall be obligated to pay wages to the workmen employed by contractor only in case the contractor fails to do so (although the principal employer can recover any payment made towards meeting such liability from the contractor). Accordingly, while the onus to pay wages shall be that of the contractor, the principal employer shall also ensure that the same is being duly paid by the contractor at the right time. HC